

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VERNON R. VINCOY, a minor,
by and through His Mother and
Next Friend, Elizabeth Vincoy,

Plaintiff,

vs.

No. CIV 97-0296 JC/RLP

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for consideration of Plaintiff's Motion for Leave to File Plaintiff's First Amended Complaint, filed November 24, 1997 (Doc. No. 29). The Court has reviewed the motion, the memoranda submitted by the parties, and the relevant authorities. The Court finds that Plaintiff's motion to amend complaint is well taken and will be **granted**.

Background

Plaintiff seeks to amend her original complaint and caption by adding two parties. First, Plaintiff seeks to change the plaintiff to the Joint Conservators for V. R. Vincoy, an incapacitated minor. The Joint Conservators are Elizabeth Vincoy, the minor's mother, and Vernon Gladden, the minor's uncle. Defendant does not oppose the addition of the second conservator as a party plaintiff. Second, Plaintiff seeks to add the San Juan Regional Medical Center as a defendant, which Defendant United States opposes.

Analysis

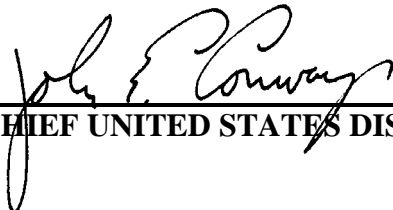
Under Fed. R. of Civ. P. 15(a), a court should freely give a party leave to amend a pleading when justice so requires. See Atchison, Topeka and Santa Fe Ry. Co. v. Lennen, 531 F. Supp. 220, 234 (D. Kan. 1981). The decision to grant leave is within a trial court's discretion. Polin v. Dun & Bradstreet, Inc., 511 F.2d 875, 877 (10th Cir. 1975). Refusing leave to amend is generally only justified upon a showing of undue delay, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or undue prejudice to the opposing party, or futility of amendment. Castleglen, Inc. v. Resolution Trust Corp., 984 F.2d 1571, 1585 (10th Cir. 1993). An amendment is futile if the complaint as amended could not withstand a motion to dismiss. 6 CHARLES A. WRIGHT & ARTHUR MILLER, FEDERAL PRACTICE AND PROCEDURE § 1487 at 643 (2d ed. 1990).

In the present case Plaintiff seeks to amend the complaint and caption to add as Defendant the San Juan Regional Medical Center. Because there has not been a showing of undue delay, bad faith, dilatory motive, undue prejudice or futility of amendment, the Court finds that Plaintiff is entitled to amend her complaint by changing the caption to add the second conservator as a party plaintiff and by adding San Juan Regional Medical Center as a new party defendant.

Wherefore,

IT IS ORDERED that Plaintiff's Motion for Leave to File Plaintiff's First Amended Complaint (Doc. No. 29) be, and hereby is, **granted**.

DATED this 8th day of January, 1998.



CHIEF UNITED STATES DISTRICT JUDGE

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